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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XG131

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Bravo Wharf Recapitalization Project

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; proposed incidental harassment authorization; request for comments.

SUMMARY: NMFS has received a request from the U.S. Navy (Navy) for an incidental harassment authorization (IHA) that would cover a subset of the take authorized in an IHA previously issued to the Navy to incidentally take bottlenose dolphins, by Level B harassment only, during construction activities associated with a wharf recapitalization project at Bravo Wharf, Naval Station Mayport, Florida. The project has been delayed, such that only a subset of the work covered in the 2017 IHA has been completed and, therefore, the Navy requested that an IHA be issued to cover the remainder of their work. NMFS is proposing to issue a second IHA to cover the remainder of the incidental take analyzed and authorized in the first IHA. The authorized take numbers would be adjusted (*i.e.*, reduced) to account for the reduction in work (because a subset was already completed) and a revision of the source level based on a recent measurement, and the required mitigation, monitoring, and reporting would remain the same as authorized in the 2017 IHA referenced above. NMFS is requesting comments on its proposal to issue this IHA to incidentally take marine mammals during the Navy's specified activities. NMFS will consider public comments prior to making any final

decision on the issuance of the requested MMPA authorization and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than [*insert date 30 days after date of publication in the FEDERAL REGISTER*].

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Physical comments should be sent to 1315 East-West Highway, Silver Spring, MD 20910 and electronic comments should be sent to *ITP.daly@noaa.gov*.

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments received electronically, including all attachments, must not exceed a 25-megabyte file size. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at <https://www.fisheries.noaa.gov/node/23111> without change. All personal identifying information (*e.g.*, name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Jaclyn Daly, Office of Protected Resources, NMFS, (301) 427-8438. Electronic copies of the original application and supporting documents (including NMFS FR notices of the original proposed and final authorizations), as well as a list of the references cited in this document, may be obtained online at <https://www.fisheries.noaa.gov/node/23111>. In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

NMFS has defined “negligible impact” in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The MMPA states that the term “take” means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

Except with respect to certain activities not pertinent here, the MMPA defines “harassment” as any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing

disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

National Environmental Policy Act

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), as implemented by the regulations published by the Council on Environmental Quality (40 CFR parts 1500-1508), the Navy prepared an Environmental Assessment (EA) to consider the direct, indirect and cumulative effects to the human environment resulting from the Bravo Wharf recapitalization project. NMFS made the Navy's EA available to the public for review and comment, in relation to its suitability for adoption by NMFS in order to assess the impacts to the human environment of issuance of an IHA to the Navy. Also in compliance with NEPA and the CEQ regulations, as well as NOAA Administrative Order 216-6, NMFS has reviewed the Navy's EA, determined it to be sufficient, and adopted that EA and signed a Finding of No Significant Impact (FONSI) in July, 2016. The 2016 NEPA documents are available at <https://www.fisheries.noaa.gov/node/23111>.

Since this proposed IHA covers a subset of the same work covered in a former IHA, NMFS is preliminarily proposing to rely on this same EA and FONSI document. However, we will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the current IHA request.

History of Request

On July 21, 2015, we received a request from the Navy for authorization of the taking, by Level B harassment only, of marine mammals incidental to pile driving (predominantly vibratory pile driving, with a small amount of impact pile driving as a contingency plan in case of difficult piles) in association with the Bravo Wharf Recapitalization Project at Naval

Station Mayport, Florida. A final version of the application, which we deemed adequate and complete, was submitted on November 17, 2015. We published a notice of a proposed IHA and request for comments on December 7, 2015 (80 FR 75978), and subsequently published final notice of our issuance of the IHA on August 9, 2016 (81 FR 52637). In-water work associated with the project was expected to be completed within the one-year timeframe of the IHA (effective dates originally December 1, 2016 through November 30, 2017). The specified activities are expected to result in the take of individuals from four stocks of bottlenose dolphins (*Tursiops truncatus*).

On January 23, 2017, the Navy informed NMFS that no work had been performed relevant to the specified activity considered in the MMPA analysis. On February 22, 2017, we published a notice of a revision of the IHA (82 FR 11344), revising the effective authorization dates from March 13, 2017, through March 12, 2018.

On December 5, 2017, the Navy informed NMFS that construction had not yet begun on one of two construction phases authorized under the revised IHA. The Navy attributed delays in progress and inaccuracies in original construction planning due to a combination of: (1) Rain delays, hurricane preparation, and Hurricane Irma, (2) Inefficiencies by the contractor, and (3) Activities influenced by tides, originally unaccounted for in the schedule.

On January 9, 2018, the Navy formally requested that NMFS issue an IHA for one year from May 14, 2018, to May 13, 2019 in order to complete a subset of the construction activity previously covered by the 2017 IHA.

Because this IHA will cover a subset of the take already analyzed and authorized through the previous IHA, we primarily refer back to our previous documents and analysis, which remain germane, and describe any changes here.

Description of the Proposed Activity and Anticipated Impacts

The 2017 IHA covered the installation of 880 single sheet piles installed with a vibratory hammer over 110 days and 20 days of contingency impact driving, for a total of up to 130 construction days. The 2017 IHA authorized the Level B harassment of 370 bottlenose dolphins (330 takes from vibratory pile driving, 40 from impact pile driving), which could occur to any of the four stocks in the area. The Navy did not complete that work, and now requests that this second IHA cover the installation of the remaining 356 steel sheet piles over the course of 43 pile-driving days, plus 10 contingency impact driving days, for a total of 53 days.

To support public review and comment on the IHA that NMFS is proposing to issue here, we refer to the documents related to the previously issued IHA as well as discussing any new or changed information. These previous documents include the *Federal Register* notice of the issuance of the 2017 IHA for the Navy's Bravo Wharf (82 FR 11344, February 22, 2017), the Navy's application, the *Federal Register* notice of the proposed IHA (81 FR 52637; December 1, 2016), and all associated references and documents.

Detailed Description of the Action—A detailed description of the proposed vibratory and impact pile driving activities at Bravo Wharf is found in these previous documents. The location, timing (*e.g.*, lack of seasonality), and nature of the pile driving operations, including the type and size of piles and the methods of pile driving, are identical to those described in the previous notices, except that only a subset of the number of piles are proposed to be driven here (356 piles over 53 days, versus 880 over 130 days).

Description of Marine Mammals—A description of the marine mammals in the area of the activities is found in these previous documents, which remains applicable to this IHA as

well. In addition, NMFS has reviewed recent draft Stock Assessment Reports (SARs), information on relevant Unusual Mortality Events, and recent scientific literature, and determined that no new information affects our original analysis of impacts under the current IHA. Since issuing the 2017 IHA, NMFS published draft SARs (82 FR 60181; 19 December 2017). In the draft SARs, stock abundance information has preliminary changed for species that have the potential to occur in the activity area but for which take is not anticipated or authorized, which includes North Atlantic right whales and humpback whales. Abundance has changed for two stocks of bottlenose dolphins for which take is authorized: the Western North Atlantic, Northern Florida Coastal, and the Western North Atlantic, southern migratory coastal stocks. However, proposed abundance changes do not affect our estimated take numbers or negligible impact and small numbers determinations, and therefore these changes do not affect our analysis.

Potential Effects on Marine Mammals—A description of the potential effects of the specified activities on marine mammals and their habitat is found in these previous documents, which remains applicable to this IHA. There is no new information on potential effects.

Estimated Take—A description of the methods and inputs used to estimate take anticipated to occur and, ultimately, the take that was authorized is found in these previous documents. The methods of estimating take are identical to those used in the previous IHA, as is the density of marine mammals. One input into the take estimate, the source levels, was changed to reflect newer information. The original IHA reflected a vibratory pile driving source level of 151 decibels (dB) root mean square (rms), but more recent measurements (measurements of vibratory driving of steel sheet piles during the first year of construction at

nearby Wharf C-2 at Naval Station Mayport (DoN 2015) support a higher source level (156 dB rms). The impact pile driving source level of was also corrected from 189 dB rms to 190 rms (CalTrans 2015). The Navy modified their take estimates to reflect these newer values, which NMFS used for issuance of another IHA at Bravo Wharf (83 FR 9287; March 5, 2018). Using the same take estimate methodology described in the 2017 IHA and the updated source levels (which extends the vibratory pile driving Level B harassment isopleth from 1,166 meters (m) to 2,512 m, and the impact pile driving Level B harassment isopleth from 858 m to 1000 m), the Navy has requested 242 Level B harassment takes of bottlenose dolphins during vibratory driving and 22 during impact driving, for a total of 264 requested Level B bottlenose dolphin takes, which NMFS agrees is an accurate estimate of incidental take that may occur.. There are four stocks of bottlenose dolphins to which takes could accrue: Jacksonville Estuarine System; Western North Atlantic, northern Florida coastal; Western North Atlantic, offshore; and Western North Atlantic, southern migratory coastal.

The change in source levels results in only minimal changes to Level A Harassment zones (it is still less than 2 m for mid-frequency species and increased slightly from 40 m to 46 m for low frequency species during impact driving) and our conclusions remain unchanged. Level A incidental take is not expected to occur for the same reasons discussed in the previous documents (combination of improbability of animals entering the small zone and the expected effectiveness of the mitigation) and none is proposed for authorization.

Description of Proposed Mitigation, Monitoring and Reporting Measures—A description of proposed mitigation, monitoring, and reporting measures is found in the previous documents, which are identical in this proposed IHA. In summary, mitigation includes soft start techniques, as well as a 15-m shutdown zone for vibratory pile driving and

40-m shutdown for impact pile driving. Two trained observers will monitor to implement shutdowns and collect information.

On January 9, 2018, the Navy submitted a monitoring report for construction that had been completed under the 2017 IHA. The Navy complied with all mitigation, monitoring, and reporting protocols. Recorded takes were below the number authorized for the corresponding amount of work. The monitoring report can be viewed on NMFS's website at <https://www.fisheries.noaa.gov/node/23111>.

Preliminary Determinations

The Navy proposes to conduct a subset of activities identical to those covered in the previous 2017 IHA. As described above, the number of estimated takes of the same stocks of bottlenose dolphins (Jacksonville Estuarine System; northern Florida coastal; Western North Atlantic, offshore; and southern migratory coastal) is significantly lower than the 330 Level B harassment takes from vibratory pile driving and 40 Level B harassment takes from impact pile driving that were found to meet the negligible impact and small numbers standards and authorized under the 2017 IHA. The proposed IHA includes identical required mitigation, monitoring, and reporting measures as the 2017 IHA, and there is no new information suggesting that our analysis or findings should change.

Based on the information contained here and in the referenced documents, NMFS has preliminarily determined the following: (1) the required mitigation measures will effect the least practicable impact on marine mammal species or stocks and their habitat; (2) the authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the authorized takes represent small numbers of marine mammals relative to the affected stock abundances; and (4) the Navy's activities will not have an unmitigable adverse

impact on taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by this action.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species.

However, no incidental take of ESA-listed species is proposed for authorization or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

Proposed Authorization

As a result of these preliminary determinations, we are proposing to issue an IHA to the Navy to conduct the specified activities in Naval Station Mayport, FL from May 14, 2018, through May 13, 2019, provided the previously described mitigation, monitoring, and reporting requirements are incorporated.

This section contains a draft of the IHA itself. The wording contained in this section is proposed for inclusion in the IHA (if issued).

1. This Incidental Harassment Authorization (IHA) is valid from May 14, 2018, through May 13, 2019.

2. This IHA is valid only for pile driving activities associated with the Bravo Wharf Recapitalization Project at Naval Station Mayport, Florida.

3. General Conditions

(a) A copy of this IHA must be in the possession of the Navy, its designees, and work crew personnel operating under the authority of this IHA.

(b) The species authorized for taking is the bottlenose dolphin (*Tursiops truncatus*) from any of the four following stocks: Jacksonville Estuarine System; Western North Atlantic, Northern Florida coastal; Western North Atlantic, offshore; and Western North Atlantic, southern migratory coastal.

(c) The taking is limited to 264 Level B harassment takes from any of the aforementioned stocks of bottlenose dolphins.

(d) The taking by injury (Level A harassment), serious injury, or death of the species listed in condition 3(b) of the Authorization or any taking of any other species of marine mammal is prohibited and may result in the modification, suspension, or revocation of this IHA.

(e) The Navy shall conduct briefings between construction supervisors and crews, marine mammal monitoring team, and Navy staff prior to the start of all pile driving activity, and when new personnel join the work, in order to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures.

4. Mitigation Measures

The holder of this Authorization is required to implement the following mitigation measures:

(a) For all pile driving, the Navy shall implement a minimum shutdown zone of 15 m radius around the pile. For impact driving of steel piles, the minimum shutdown zone shall be

a 40 m radius. If a marine mammal comes within or approaches the shutdown zone, such operations shall cease.

(b) The Navy shall establish monitoring locations as described below. Please also refer to the Marine Mammal Monitoring Plan (available at <https://www.fisheries.noaa.gov/node/23111>).

i. For all pile driving activities, a minimum of two observers shall be deployed, with one positioned to achieve optimal monitoring of the shutdown zone and the second positioned to achieve optimal monitoring of surrounding waters of the turning basin, the entrance to that basin, and portions of the Atlantic Ocean. If practicable, the second observer should be deployed to an elevated position, preferably opposite Bravo Wharf and with clear sight lines to the wharf and out the entrance channel.

ii. These observers shall record all observations of marine mammals, regardless of distance from the pile being driven, as well as behavior and potential behavioral reactions of the animals. Observations within the turning basin shall be distinguished from those in the entrance channel and nearshore waters of the Atlantic Ocean.

iii. All observers shall be equipped for communication of marine mammal observations amongst each other and to other relevant personnel (*e.g.*, those necessary to effect activity delay or shutdown).

(c) Monitoring shall take place from fifteen minutes prior to initiation of pile driving activity through thirty minutes post-completion of pile driving activity. Pile driving may commence when observers have declared the shutdown zone clear of marine mammals. In the event of a delay or shutdown of activity resulting from marine mammals in the shutdown zone, animals shall be allowed to remain in the shutdown zone (*i.e.*, must leave of their own

volition) and their behavior shall be monitored and documented. Monitoring shall occur throughout the time required to drive a pile. The shutdown zone must be determined to be clear during periods of good visibility (*i.e.*, the entire shutdown zone and surrounding waters must be visible to the naked eye).

(d) If a marine mammal approaches or enters the shutdown zone, all pile driving activities at that location shall be halted. If pile driving is halted or delayed due to the presence of a marine mammal, the activity may not commence or resume until either the animal has voluntarily left and been visually confirmed beyond the shutdown zone or fifteen minutes have passed without re-detection of the animal.

(e) Monitoring shall be conducted by qualified observers, as described in the Monitoring Plan. Trained observers shall be placed from the best vantage point(s) practicable to monitor for marine mammals and implement shutdown or delay procedures when applicable through communication with the equipment operator. Observer training must be provided prior to project start and in accordance with the monitoring plan, and shall include instruction on species identification (sufficient to distinguish the species listed in 3(b)), description and categorization of observed behaviors and interpretation of behaviors that may be construed as being reactions to the specified activity, proper completion of data forms, and other basic components of biological monitoring, including tracking of observed animals or groups of animals such that repeat sound exposures may be attributed to individuals (to the extent possible).

(f) The Navy shall use soft start techniques recommended by NMFS for impact pile driving. Soft start requires contractors to provide an initial set of strikes at reduced energy, followed by a thirty-second waiting period, then two subsequent reduced energy strike sets.

Soft start shall be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of thirty minutes or longer.

(g) Pile driving shall only be conducted during daylight hours.

(h) If a species for which authorization has not been granted, or a species for which authorization has been granted but the authorized takes are met, is observed approaching or within the monitoring zone, pile driving and removal activities must shut down immediately using delay and shut-down procedures. Activities must not resume until the animal has been confirmed to have left the area or fifteen minutes have passed without re-detection of the animal.

5. Monitoring

The holder of this Authorization is required to conduct marine mammal monitoring during pile driving activity. Marine mammal monitoring and reporting shall be conducted in accordance with the Monitoring Plan.

(a) The Navy shall collect sighting data and behavioral responses to pile driving for marine mammal species observed in the region of activity during the period of activity. All observers shall be trained in marine mammal identification and behaviors, and shall have no other construction-related tasks while conducting monitoring.

(b) For all marine mammal monitoring, the information shall be recorded as described in the Monitoring Plan.

6. Reporting

The holder of this Authorization is required to:

(a) Submit a draft report on all monitoring conducted under the IHA within ninety days of the completion of marine mammal monitoring, or sixty days prior to the issuance of

any subsequent IHA for projects at Naval Station Mayport, whichever comes first. A final report shall be prepared and submitted within thirty days following resolution of comments on the draft report from NMFS. This report must contain the informational elements described in the Monitoring Plan, at minimum (see <https://www.fisheries.noaa.gov/node/23111>), and shall also include:

- i. Detailed information about any implementation of shutdowns, including the distance of animals to the pile and description of specific actions that ensued and resulting behavior of the animal, if any.

- ii. Description of attempts to distinguish between the number of individual animals taken and the number of incidents of take, such as ability to track groups or individuals.

- iii. Estimated total take extrapolated from the number of marine mammals observed during the course of construction activities, if necessary.

- (b) Reporting injured or dead marine mammals:

- i. In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by this IHA, such as an injury (Level A harassment), serious injury, or mortality, Navy shall immediately cease the specified activities and report the incident to the Office of Protected Resources, NMFS, and the Southeast Regional Stranding Coordinator, NMFS. The report must include the following information:

- A. Time and date of the incident;

- B. Description of the incident;

- C. Environmental conditions (*e.g.*, wind speed and direction, Beaufort sea state, cloud cover, and visibility);

D. Description of all marine mammal observations in the 24 hours preceding the incident;

E. Species identification or description of the animal(s) involved;

F. Fate of the animal(s); and

G. Photographs or video footage of the animal(s).

Activities shall not resume until NMFS is able to review the circumstances of the prohibited take. NMFS will work with Navy to determine what measures are necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. Navy may not resume their activities until notified by NMFS.

ii. In the event that Navy discovers an injured or dead marine mammal, and the lead observer determines that the cause of the injury or death is unknown and the death is relatively recent (*e.g.*, in less than a moderate state of decomposition), Navy shall immediately report the incident to the Office of Protected Resources, NMFS, and the Southeast Regional Stranding Coordinator, NMFS.

The report must include the same information identified in 6(b)(i) of this IHA. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with Navy to determine whether additional mitigation measures or modifications to the activities are appropriate.

iii. In the event that Navy discovers an injured or dead marine mammal, and the lead observer determines that the injury or death is not associated with or related to the activities authorized in the IHA (*e.g.*, previously wounded animal, carcass with moderate to advanced decomposition, scavenger damage), Navy shall report the incident to the Office of Protected Resources, NMFS, and the Southeast Regional Stranding Coordinator, NMFS, within 24

hours of the discovery. Navy shall provide photographs or video footage or other documentation of the stranded animal sighting to NMFS. The Navy can continue its operations under such a case.

7. This Authorization may be modified, suspended or withdrawn if the holder fails to abide by the conditions prescribed herein, or if NMFS determines the authorized taking is having more than a negligible impact on the species or stock of affected marine mammals.

Request for Public Comments

We request comment on our analyses, the draft authorization, and any other aspect of this Notice of Proposed IHA for Navy's Bravo wharf construction activities. Please include with your comments any supporting data or literature citations to help inform our final decision on Navy's request for an MMPA authorization.

Dated: March 29, 2018.

Elaine T. Saiz,

Acting Deputy Director,

Office of Protected Resources,

National Marine Fisheries Service.

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